ABDUL WAHAB v. MUTHUSAMY & ANOR.

[O.C.J. (Suffian J.) March 30, 1962]

[K.L. — Civil Appeal No. 11 of 1961]

Landlord and Tenant — Application to Rent Assessment Board for certificate under Control of Rent Ordinance, 1956, s.8(1)(e) — Refusal by Board to issue certificate — Whether an appeal lay against Board's refusal — Circumstances under which appeal would lie.

Since the decision of the Court of Appeal in *Gurcharan Kaur* v. *Rochi Silk Store* (3), the Court has jurisdiction to interfere if the Rent Assessment Board refuses to issue a certificate when an application is made under section 8(1)(e) of the Control of Rent Ordinance, 1956. However, the Court may interfere only if there is no evidence on which the Board directing correctly as to the law could arrive at the conclusion at which it arrives or as a matter of inference the evidence on which the Board acts cannot lead to that conclusion. In these circumstances the error would be an error of law.

When acting under section 8(1)(e) of the Ordinance the Board must be satisfied (1) that the owner of the premises intends to demolish them for the purpose of rebuilding; and (2) in the Board's opinion, it is in the public interest that he should be permitted to do so.

Cases referred to:—

(1) *Low Yeo Loong & Ors.* v. *Chop Thong Cheong* [1954] M.L.J. 126.

(2) *P.N. Mohamed Ibrahim* v. *Yap Chin Hock & Anor.* [1954] M.L.J. 127.

(3) *Gurcharan Kaur* v. *Rochi Silk Store* [1959] M.L.J. 229.

CIVIL APPEAL.

S. D. K. Peddie for the appellant.

1st respondent absent.

2nd respondent in person.

Cur. Adv. Vult.

Suffian J.: In this case the owner of premises, 84, Brickfields Road, Kuala Lumpur, applied to the Kuala Lumpur Rent Assessment Board for a certificate under paragraph (e) of sub-section (1) of section 8 of the Control of Rent Ordinance, No. 2 of 1956, but the Board refused to certify that it was satisfied that the owner intended to demolish the premises for the purpose of rebuilding and that in its opinion it was in the public interest that he should be permitted to do so. Without such a certificate the court will not give the owner an ejection order and so he appeals. Section 11 provides that an appeal lies only on a point of law, which means that there is no appeal on a point of fact. Buhagiar J. in *Low Yeo Loong & Ors.* v. *Chop Thong Cheong* (1) and Wilson J. in *P.N. Mohamed Ibrahim* v. *Yap Chin Hock & Anor.* (2) held that where the board issues a certificate, the certificate is final and binding and the court should not interfere with it and may only enforce it. This implies that the court has no power to interfere if the board refuses to so certify. But since the Court of Appeal decision in 1959 in *Gurcharan Kaur* v. *Rochi Silk Store* (3) it is clear that the court can interfere with the decision of the board if there was no evidence on which the board directing itself correctly as to the law could have arrived at the conclusion at which it arrived or as a matter of inference the evidence on which the board acted should not have led to that conclusion, for that would be an error in law.

In the present case there is nothing on the face of what the board has said in its grounds of judgment to show that it took an erroneous view of the law, but in my judgment the evidence on which the board acted should not have led to the conclusion at which it arrived.

There are two requirements concerning which the board must be satisfied in an application under paragraph (e) of sub-section (1) of section 8:—

(a) the owner of the premises intends to demolish them for the purpose of rebuilding; and

(b) in the Board's opinion, it is in the public interest that he should be permitted to do so.

As regards requirement (a), there was in my view ample evidence before the board to satisfy it that the owner intended to demolish the premises for the purpose of rebuilding. He had prepared a plan, exhibit A2, to put up a three-storey house in place of the present premises, a single-storey building, and that plan had been approved by the Municipality. The architect who drew up the plan confirmed this. The Kuala Lumpur Town Planner said that planning permission for a three-storey house on this land had been granted. There was also ample evidence that the owner had the necessary financial resources to re-develop this land. In my view the evidence in this case showed that the owner went beyond merely contemplating rebuilding, it connoted a state of affairs which he decided to bring about and which he had a reasonable prospect of being able to bring about.

As regards requirement (b), the architect concerned and the Town Planner both said that it was in the public interest that the present premises be pulled down and a three-storey building be put up in their place. Whether or not it is in the public interest that the owner be permitted to demolish and rebuild is of course not for either of them to say — it is a matter entirely for the board — but neither of them was cross-examined on this, and it would seem that the board was influenced partly by the fact that on inspection the premises were found to be in a satisfactory condition and usable for several more years. With respect, I do not think that this is the right test to apply, for it may be perfectly desirable to pull down an old building in good condition and rebuild in its place a better and bigger one to provide increased accommodation in a growing city. It may well be that as the tenants in this case have been on the premises for a long time and have spent some money on repairs, their ejectment may cause hardship, but in considering whether or not to issue a certificate the board has power to impose such conditions as to it may seem just between the parties and it would seem therefore that by the use of this power the board may alleviate any hardship, and no doubt the board will consider such representations made by the tenants as to this before issuing its certificate.

This case is remitted to the board with a direction that it erred in law in refusing, on the grounds stated by it, the certificate sought by the owner, and that if, on further consideration, the board is of the opinion that it is in the public interest that the owner be permitted to demolish the premises for the purpose of rebuilding, the board should consider such representations as may be made by the tenants with a view to imposing such conditions as to it may seem just, to alleviate any hardship between the parties.

Order accordingly.

Solicitors: *Bannon & Bailey.*

SURAIN SINGH v. YATIM EUSOPE

[A.C.J. (Wee Chong Jin J.) February 28, 1962]

[Singapore — District Court Appeal No. 4 of 1962]

Money and Moneylending — Dismissal of plaintiff's claim as being contrary to s.5 of the Moneylenders Ordirance (Cap. 193) — Finding of fact by District Judge against weight of evidence — Whether respondent could rely on s.5 — Moneylenders Ordinance, 1959.

Interpretation and General Clauses Ordinance (Cap. 2), s.14(c) — "Accrued" of "acquired" right.

The plaintiff claimed $774 being the balance of principal and interest due on a promissory note. The defendant's main defence was that he did not borrow any money from the plaintiff but from someone else — a nephew of the plaintiff. In the court below the learned District Judge accepted this defence and dismissed the plaintiff's claim on the ground that it was in breach of section 5 of the old Moneylenders Ordinance (Cap. 193). The plaintiff appealed. It was contended for the appellant in this appeal that the District Judge's finding of fact was wrong as being against the weight of evidence. It was further contended that the old Moneylenders Ordinance (Cap. 193) having been repealed by the Moneylenders Ordinance, 1959, the respondent could not rely on section 5 of the repealed Ordinance.

Held: having regard to the evidence adduced at the trial and to the grounds of decision of the District Judge the finding of fact by the District Judge was wrong as being against the weight of evidence because it was difficult to accept the respondent's oral testimony unsupported by other evidence that he did not borrow the money from the plaintiff.

Per Curiam: "Looking at the Moneylenders Ordinance, 1959, as a whole it is plain that the intention of the legislature was not to deprive a person who had borrowed money from a moneylender from being able, in the case where the moneylender had ceased to carry on business after the coming into force of this Ordinance, of the right in a suitable case to avail himself of a defence based on section 5 of the old Ordinance. This being so, I apprehend that the necessary action will no doubt be taken quickly by the legislature to remedy what may be a defect in the present Ordinance."

DISTRICT COURT APPEAL.

P. Coomaraswamy for the appellant.

Respondent in person.

Cur. Adv. Vult.

Wee Chong Jin J.: In this appeal the plaintiff is appealing against the judgment of the learned District Judge dismissing his claim for $774 being the balance of principal and interest due on a promissory note.

No defence was filed and at the trial the defendant, who was English speaking, was unrepresented and conducted his own defence. It appeared from his cross-examination of the plaintiff and from his oral testimony that his main defence was that he did not borrow any money from the plaintiff but from someone else by the name of Arjan Singh, a nephew of the plaintiff. The trial judge accepted this defence and dismissed the plaintiff's claim on the ground that he was "in breach of section 5 of the old Moneylenders Ordinance (Cap. 193)".

The plaintiff was admittedly a moneylender when the old Moneylenders Ordinance (Cap. 193) was in force and at the time when the alleged loan was made by him to the defendant but had ceased to be a moneylender after the coming into operation of the Moneylenders Ordinance, 1959.

Assuming that the trial judge's finding of fact that the defendant did not borrow any money from the plaintiff and that the loan was made to him not by the plaintiff but by the plaintiff's nephew, Arjan Singh is justified on the evidence, this appeal must necessarily fail on the ground that the contract was not between the plaintiff and the defendant but between Arjan Singh and the defendant and it would be immaterial whether or not the provisions of the old Moneylenders Ordinance (Cap. 193) had been complied with by the plaintiff.

Counsel for the plaintiff, however, contends that the learned judge's finding of fact was wrong as being against the weight of the evidence. Having regard to the evidence adduced at the trial and to the grounds of decision of the learned judge, I agree with this contention.

The evidence of the defendant, which he gave in English, disclosed that the person from whom he alleged he obtained the loan, was known to him since the year 1956 and that this person was working as a driver at No. 3 Sub-Depot, B.O.D. where the defendant was a storekeeper. His evidence was that he took two loans of $300 each from this person and that the promissory note sued on was one of the two notes he signed in respect of these two loans. He further stated that he did not know this person's full name but merely knew him as Singh until after he was served with the summons in this case.

With respect to the trial judge, I find it hard to believe that the defendant on these facts did not know the full name of his fellow employee until after he was served with the summons. Having come to the conclusion as I do that the defendant knew Arjan Singh's full name while they were fellow employees, I find it difficult to accept the defendant's oral testimony unsupported by other evidence that he did not borrow the money from the plaintiff but from Arjan Singh, in view of the fact that the promissory note, which the defendant acknowledged he had signed as the borrower, contained the name of the plaintiff and not of Arjan Singh as the lender and the acknowledgment portion